ARNOLD & PORTER LLP

Joel M. Gross
Joel.Gross@aporter.com

+1 202.942.5705
+1 202.942.5999 Fax

555 Twelfth Street, NW
Washington, DC 20004-1206

October 13, 2010

VIA E-MAIL

Chrisna Tan
Attorney-Advisor
United States Environmental Protection Agency
Office of Enforcement and Compliance
Assurance
Office 4232J Ariel Rios South (2272J)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Financial Assurance for CERCLA Obligations at Atlantic Richfield Company and Other BP Group Sites

Dear Chrisna:

We wanted to respond to your recent communications concerning the financial assurance obligations of Atlantic Richfield Company ("AR") and BP Corporation North America Inc. ("BPCNAI") under CERCLA decrees and orders. In particular, we want to both (i) elaborate on the companies' position that EPA is acting unfairly and contrary to applicable law, and (ii) propose a path forward that would resolve the pending CERCLA issues.

A. Background

As you know, BPCNAI was notified earlier this year that certain regulators had concerns with the corporate guarantee that it has provided for many years to meet various financial assurance obligations of BPCNAI subsidiaries and affiliates. The concerns did not relate to the effectiveness of the corporate guarantees from BPCNAI themselves. The guarantees have always been and remain very strong and enforceable. The concern was whether it was appropriate to utilize a bond rating from the guarantor's subsidiary to meet the financial test set forth in the RCRA regulations, primarily at 40 CFR §§ 264.143(f) & 265.143(f). Although the company had good reason to believe that the guarantees in place did comply with the 40 CFR § 164.143(f) (as explained further on page 5 of this

letter), it has nonetheless worked to put alternative financial assurance instruments in place, to ensure that there would be no issue as to the adequacy of the companies' financial assurances.

After EPA's Office of Enforcement and Compliance Assurance ("OECA") issued two Notices of Violation on July 15th relating to BP's RCRA financial assurances at eight facilities, we immediately requested an opportunity to meet with OECA to discuss how BP planned to address the NOVs, and how the matter could be resolved consensually. At that meeting, which took place on July 21st, we made clear that the BPCNAI corporate guarantee had been used to meet other obligations, beyond those indentified in the NOVs, including at a number of CERCLA sites. We offered to send the Agency a comprehensive list of those obligations, and did so on July 23rd. That listing included obligations at six CERCLA facilities, one of which (the Sinclair Refinery Site) was a site at which BP had already replaced the corporate guarantee with a letter of credit. At our July 21st meeting, you indicated that OECA would be focused on addressing the CERCLA issues as well, and we indicated an interest in a comprehensive resolution of all issues.

Since the initial meeting, BP has worked very hard to replace the guarantees referenced in the NOVs, and has submitted numerous letters of credit, trust agreements and certificates of insurance to accomplish that objective. Guarantees have also been replaced at a number of other state-regulated facilities. At the same time, BPCNAI has continued to maintain a strong credit rating, and Moody's recently assigned it a Baa1 issuer rating, with a stable ratings analysis (Sept. 16, 2010). An excerpt filed with SEC is available at: http://markets.financialcontent.com/mi.charlotte/action/getedgarwindow?accesscode=89183610000165.) BP and AR has also continued to meet all of their obligations under all of the consent decrees and orders in question.

BP has been in the process of addressing the financial assurance obligations at the remaining CERCLA facilities utilizing the BPCNAI guarantee, which includes two judicial consent decree (Butte Mine Flooding and Milltown, both in Montana), three administrative orders on consent (Leviathan in California; Yerington in Nevada; and the Northwest Oil Drain Site in Utah) and two unilateral administrative orders at the Yerington site. As discussed in my September 8th letter setting forth BP's position as to why a penalty is not appropriate with respect to any of the obligations in this case, the Agency's position that the guarantees needed to be replaced at these CERCLA facilities is especially problematic, since the companies had made explicitly clear for years, in

written submissions to EPA, that a subsidiary bond rating was being relied upon, and the financial assurances had in a number of cases been approved in writing by EPA. Nonetheless, in the interest of cooperation, the Company took initial steps toward obtaining letters of credit for each of those CERCLA obligations.

B. The September 20th Letters

Then, on September 20, 2010, BP received two letters from Kenneth Patterson, Director of the Office of Site Remediation Enforcement within OECA. In these letters:

a. EPA asserted that financial assurance provided by the companies pursuant to enumerated Orders and Consent Decrees (at the Butte, Milltown, Yerington, Leviathan and Northwest Oil Drain sites) is "inadequate;" and directed the companies to "provide EPA with alternate financial assurance in the appropriate amounts in the form of letters of credit that are in compliance with the terms of the specific Orders and Consent Decrees" within 30 days of receipt of the correspondence.

b. EPA stated that the failure to have "adequate" financial assurances could subject the companies to "statutory and/or stipulated penalties."

c. Stating that it "also believes that the financial assurance provided at additional remedial sites may rely on the same form of financial assurance," EPA requested information about financial assurance obligations at a total of 76 additional sites, beyond those which the company had identified as still utilizing a corporate guarantee. The list appears to include sites at which the Company does not have financial assurance obligations, as well as sites at which the required work was completed and the financial assurance obligation was terminated.

These September 20th letters were of substantial concern to the Company. This is a very extensive request for information that should be available in EPA's own regional files. While the Company is willing to search its own files, many of the requests involve events that occurred more than five years ago, and the Company needs and has requested additional time to locate such items.

In addition, in the first such search that the Company conducted, for the Eureka Mills Consent Decree, it found a September 28, 2005 letter from EPA confirming that all required work had been completed at the site. The letter states that "EPA has determined that, since the work required by the Decree has been completed, AR does not need to maintain financial security to assure performance of the work" (copy enclosed). The request that the Company prove this to OECA for this and numerous other similarly-situated sites was concerning to us.

We were also concerned with the letters' references to possible penalties, a concern which was exacerbated at our meeting on October 4th, when you indicated that OECA was considering whether to seek penalties with respect to the CERCLA financial assurances. We fail to see how the Agency in good conscience can even raise the possibility of penalties for financial assurances that were fully disclosed as relying on a subsidiary bond rating, and which were in certain cases even approved by the Agency.

At our October 4th meeting, we indicated that the Company was still willing to get letters of credit at the Yerington, Leviathan and Northwest Oil Drain sites, but upon further evaluation of the overall situation, the Company now had questions, for reasons articulated at the meeting and discussed below, as to whether letters of credit could be required for the two consent decree sites, Butte Mine Flooding and Milltown. To allow us to continue to discuss these issues with you constructively, we asked for assurances that the September 20th letters were not intended to require the Company, if it disagreed with them, to invoke dispute resolution procedures under applicable decrees and orders. On October 5th, you e-mailed us that "EPA's CERCLA information requests which were sent to BP Products North America and Atlantic Richfield Company on September 20, 2010 are not intended to trigger the Dispute Resolution provisions of the Orders and Consent Decrees in question at this time, but EPA reserves the right to do so in the future."

However, by e-mail dated October 6, 2010, Manuel Ronquillo of your office advised BP that although the September 20th Requests are not notices of violation, they "represent action taken pursuant to the applicable orders and decrees, and do serve as notice to BP that EPA has determined that its prior financial assurances have been found to be currently inadequate and that it is required to attain adequate financial assurance." Mr. Ronquillo further advised that, "[i]f BP disagrees with EPA's determination and/or BP's obligation to provide new, adequate financial assurances, then BP should avail itself of the process provided under the dispute resolution provisions in the applicable agreements and decrees."

We are disappointed that this matter may now head into a more formal process. The Company raised the question about the basis for requiring a letter of credit under the two Montana consent decrees in a conversation with OECA in order to foster a reasonable discussion of the issue, without declaring a formal dispute under the consent decrees. The Companies' objective is still to continue to work cooperatively with EPA to address financial assurance obligations on a national basis. At this stage, in the hope that a consensual resolution of this issue can be found, the Companies are not invoking the dispute resolution provisions of the applicable agreements and decrees, though they will do so prior to the expiration of the 30-day period cited in the September 20th letters if an agreement cannot be reached.

C. Explanation of Position

Based on our discussions and our review of the applicable agreements and decrees, we believe EPA's posture with regard to CERCLA financial assurance may be summarized as follows: (1) The financial guarantees that BPCNAI issued under the six decrees and orders are inadequate; and (2) EPA is considering whether to seek penalties for these alleged inadequacies. We respectfully submit that both positions are without basis.

The flaw in EPA's position can most clearly be seen with reference to the substantial ($60 million) financial assurance obligations under the Butte Mine Flooding decree. We have consulted with Atlantic Richfield Company's counsel who negotiated that decree, and who have advised on its implementation, and they have confirmed the following facts to us. They are also confident that their Regional and State counterparts would fully corroborate all of these facts and we urge you to consult with them if you have not done so already:

a. The financial assurance provisions were important, much discussed and expressly negotiated terms in the consent decree negotiations.

b. For various reasons, including the duration of the decree, the Government wanted a financial assurance provision that went beyond the requirements of the RCRA regulations. In particular, the Government insisted, and Atlantic Richfield agreed, to a requirement that the guarantor have at least $20 billion in net worth.

c. The ability to rely on a corporate guarantee to meet the financial assurance obligation was critical to AR. AR made clear to the Government that it intended to rely on a guaranty from BPCNAI and that the guaranty would utilize a bond rating of a subsidiary to conform to the RCRA requirements. The Government agreed that that would be acceptable.

d. The decree, as approved and entered by the district court, explicitly provides that the guaranty which AR provided met the requirements of both the Decree and of RCRA. Paragraph 45 provides: "Prior to the date of lodging this Consent Decree, the Settling Defendants provided the United States and the State with a financial assurance that meets these requirements and the requirements of 40 C.F.R. § 264.14 3(f) through a guarantee by BP Corporation North America Inc., a corporate affiliate of ARCO. This initial demonstration of the financial tests was based upon audited financial statements for calendar year 2000."

e. The submittals to EPA Region 8 and Montana in connection with the Decree have made clear that a subsidiary bond rating continued to be utilized. Thus the 2002 submittal made clear that the Standard & Poor's AA+ rating was not that of the guarantor BPCNAI but of a subsidiary: "Bonds are issued by BP Company North America Inc., a wholly owned subsidiary of BP Corporation North America Inc. Bond rating is based upon guarantee by BP plc." Because that bond was due to expire in 2008, the 2007 submittal replaced the expiring bond with the more recent bond issue of BP Capital Markets America, Inc., another BPCNAI subsidiary, and a bond issue that is also guaranteed by BP plc. These facts were clearly identified on the annual financial assurance submission that the company is required to make to EPA in 2007, and the use the subsidiary bond has continued through 2010. The use of this guarantee, based on this bond, has been approved in writing by Region 8, most recently in a letter dated January 7, 2010, which indicated that the "corporate guarantee for the Mine Flooding Site contained in the March 23 letter" was

"sufficient under the requirements of the Mine Flooding Site Consent Decree."

Given this history, and the repeated approval of the guarantee at issue by the Government and by the court, it is inconceivable to us that the Agency could justify a claim for a penalty here. Nor do we believe that the Agency can demand that the corporate guarantee be replaced. At our meeting on October 4th, you stated that the Agency had the right to demand new assurance if the existing ones were not adequate. But the applicable provision, paragraph 46, does not provide EPA with the unilateral right to reverse or reopen the terms of the decree. Rather, new assurances can only be required if the existing ones do not comply with the terms of the decree: "In the event that EPA, after a reasonable opportunity for review and comment by the State , determines at any time that the financial assurances provided pursuant to this Section no longer satisfy the requirements of Paragraph 45, Settling Defendants shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EP A and the State alternate financial assurance in compliance with Subparagraph 45(b) of this Consent Decree." Here the existing assurances meet the requirements of Paragraph 45, and EPA has no right to demand new ones.

D. Proposal

Despite our continued belief that there is no basis to require replacement financial assurances at these CERCLA sites, in the interest of resolving EPA's concerns in a cooperative way, we propose that this matter be settled in the following manner.

a. Atlantic Richfield Company would agree to obtain and submit letters of credit for the Leviathan Mine and Yerington Sites on or before October 31, 2010, and BP Company North America would obtain a letter of credit for its share of the financial assurance required for the Northwest Oil Drain site. (As you may know, the other two responsible parties recently reaffirmed their use of corporate guarantees for their share of the Northwest Oil Drain financial assurance obligation). [1]

[1] With respect to the Yerington unilateral administrative orders, we would obtain letters of credit without waiving the company's position that EPA is not legally authorized to require financial assurances in such orders. With respect to the Leviathan site, the letters

Footnote continued on next page

b. Atlantic Richfield would agree to obtain and submit letters of credit for the Butte Mine Flooding and Milltown Consent Decree that would be effective on or before January 1, 2011. We would discuss with you the appropriate duration of these letters of credit.

c. In 2012, all members of the BP group of companies will be allowed to revert to the corporate guarantee for these obligations, provided that the guarantor meets all of the requirements of 40 C.F.R. § 264.143(f), and does not rely on a subsidiary's bond rating.

d. EPA will not seek any statutory or stipulated penalties for the companies' past use of the BPCNAI corporate guarantee under any of these CERCLA orders or decrees.

e. The parties would work out an appropriate narrowing of the pending information requests to those facilities where there is a reasonable basis to believe that a BPCNAI corporate guaranty may still be in use, and an appropriate response schedule.

We believe this proposal should be acceptable to EPA because it will result in letters of credit being issued for all of the obligations for which corporate guarantees are now in place. And, by resolving the CERCLA issues now, it will allow us to move more expeditiously to resolve with OECA the issues raised by the pending NOVs, and thereby achieve final resolution of this matter.

We are prepared to discuss this proposal with you, in the hope of reaching a prompt agreement, as soon as you are ready. In the event you are not able to respond by October 20th, and in order to avoid delaying the process further by invoking the dispute resolution provisions of the agreements and decrees, we would ask that EPA withdraw its determination of a violation of the consent decrees and orders, without prejudice to

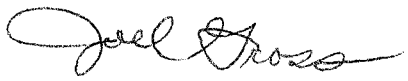
---

Footnote continued from previous page
of credit would cover the same obligations that are now covered by the corporate guarantee.

EPA's right to issue a notice of violation in the future, if our informal settlement negotiations do not result in a settlement agreement.

We look forward to your response, with the hope that a fair and prompt resolution can be reached.

Sincerely,



Joel M. Gross

cc: Ken Patterson, EPA
Cari Shiffman, EPA
Christine McCulloch, EPA
Derek Threet, EPA
Robert Genovese, BP
Jean Martin, BP
William Duffy, Esquire
Richard Curley, Esquire